



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EG14SB-64623
EEOC CHARGE NO. 17E-2014-00375

Claudia Melo and the Director
of the Division on Civil Rights,

Complainants,

v.

Allied Plastic Holdings, LLC, d/b/a
Allied Extruders,

Respondent.

Administrative Action

FINDING OF PROBABLE CAUSE

On May 27, 2014, Newark resident Claudia Melo (Complainant)¹ filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Allied Plastic Holdings, LLC, d/b/a Allied Extruders (Respondent),² discriminated against her based on gender, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. The ensuing investigation found as follows.

Respondent, a manufacturer of polyethylene films located in Newark, posted a newspaper advertisement seeking persons to work as full-time packers. On May 21, 2014, Complainant went to Respondent's facility to inquire about the position. She alleges that the employee who was involved in processing employment applications, Administrative Assistant Carla Rivera, told her that the company was only considering males for the job.

¹ The DCR Director hereby intervenes as a complainant pursuant to N.J.S.A. 13:4-2.2(e). However, for purposes of this finding, "Complainant" will refer only to Ms. Melo.

² The verified complaint identifies Respondent as "Allied Extruders Co., Division of Sigma Plastics Group." However, Respondent stated in its response to discovery demands that its proper name is "Allied Plastics Holdings, LLC d/b/a Allied Extruders." Accordingly, the caption of the matter has been so modified.

Respondent denied engaging in any discriminatory practice. It assured DCR that equal consideration was given to all applicants regardless of gender and that the “only requirement” for the packer position was that the candidate had a “lifting capacity of 50 lbs.” See Respondent’s Response to Petitioners Document & Information Requests, Aug. 18, 2014, p. 2. It acknowledged that Complainant came to the facility to apply for the position but noted that she “was disqualified from consideration” because she failed to sit for an interview. Id. at p. 3. It stated:

[Complainant] vacated the premises prior to being interviewed. As such, [Complainant] did not permit Respondent with an opportunity to consider her for an open position. Had [Complainant] completed her interview, she would have been considered equally among all other candidates for the position.

See Respondent’s Answer to Verified Complaint, Aug. 18, 2014, ¶ 3. Elsewhere, Respondent reiterated that Complainant voluntarily withdrew herself from the selection process. See e.g., Response to Info. Requests, supra, at p. 2 (stating “Complainant was not considered for any position because she failed to complete the application process by leaving prior to her scheduled interview.”)

Complainant told DCR that she was not offered an interview and left the building after being told that the company was not interested in female applicants.

Respondent stated that there were ten applications for the position, of which six were male and four were female. In June 2014, approximately two weeks after Complainant’s visit to the facility, Respondent selected four persons to work as packers: R.A., L.C., W.C., and B.C. All four are male.

The DCR investigator spoke with two women--S.S. and F.B.--who submitted applications for the packer position in May 2014. Both corroborated Complainant’s claim. S.S. stated that she was told by an employee named “Carla” that the company was only seeking males for the position. F.B., contacted separately, gave virtually the same account except that she could only identify the employee by her last name, “Rivera.” Like Complainant, S.S. and F.B. told DCR that once they learned that women were not being considered, they left the facility without being interviewed.



Respondent told DCR that the “company was purchased by the current owners on or about November of 2010” and that “many of the individuals who were employed by the previous owner were offered positions of employment effective on November 1st of 2010.” See Letter from Angelo Auteri, Esq., to DCR, Nov. 5, 2014. Respondent produced a list of the 49 employees who are employed as packers, along with their gender and hire dates. Twelve are women. All twelve women were hired in October 2014, i.e., three months after Respondent was served with the instant charges of gender discrimination.³

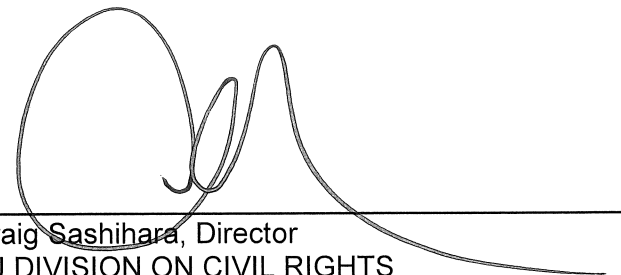
At the conclusion of an investigation, the Director is required to determine whether “probable cause” exists to credit a complainant’s allegation of discrimination. Probable cause for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” N.J.A.C. 13:4-10.2. A finding of probable cause is not an adjudication on the merits but merely an “initial culling-out process” whereby a preliminary determination is made that further action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). If the Director determines that probable cause exists, the matter will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). On the other hand, if the Director determines that there is no probable cause, then that finding is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

The LAD makes it illegal to “refuse to hire or employ” or otherwise discriminate against a current or prospective employee in the “terms, conditions or privileges of employment” based on gender. N.J.S.A. 10:5-112(a).⁴

³ Respondent was sent the verified complaint via certified mail on or around July 18, 2014.

In this case, DCR was presented with two conflicting versions of the events. Either Complainant went to the facility, inquired about the position, but then voluntarily abandoned the process prior to a scheduled interview. Or she went to the facility hoping for the employment opportunity and left only after being told by Carla Rivera that women were not being considered. Because two other women told DCR that they went to the same facility around the same time, completed job application forms for the same position, were told the same information by the same representative (one candidate recalled her first name as "Carla," the other recalled her last name as "Rivera"), and left assuming that they would not be interviewed, coupled with hiring information reported by Respondent's counsel, the Director finds that there is a sufficient "reasonable ground of suspicion supported by facts and circumstances" to accept, for purposes of this disposition only, Complainant's version of events.

WHEREFORE, it is on this  day of , 2014, determined that PROBABLE CAUSE exists to credit the allegations that Respondent violated the LAD.


Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS

⁴ Although the LAD allows gender to be taken into account in "certain circumstances where sex is a bona fide occupational qualification," N.J.S.A. 10:5-112(a), there is no allegation or evidence that gender is a bona fide occupational qualification for the position at issue.